

**STILLWATER COUNTY
COMMISSIONER MINUTES**

<p>Notice: These minutes reflect the proceedings of the Board of County Commissioners. The official minutes are on file with the Clerk and Recorder MCA 7-4-2611(2)(b).</p>
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**REGULAR MEETING
January 19, 2021**

PRESENT	Commissioner Mark Crago, Chair, Commissioners Tyrel Hamilton and Steve Riveland, members, Shannon Fisher, Admin Assistant. Others Present: Kevin Ray, Road & Bridge; Mark Schreiner, Road & Bridge; Carol Arkell, DES; Bill Pronovost, DES; Chip Kem, SCSO; Emily Schabacher, Stillwater County News; Maurie Petterson, Historic Preservation Committee; Forrest Mandeville, Planning; Citizens: John Sherwood, Ron Olson, Gina Olson, Bob Van Oosten, Charlotte Van Oosten, Devin Olson, Mariah Weiler, Tom Kelly.
PLEDGE	Commissioner Crago opened the meeting with the Pledge of Allegiance.
MINUTES	December 15, 2020 Commissioner Hamilton MOVED to approve the minutes as presented. Commissioner Riveland SECONDED . No discussion. <u>Motion passed unanimously.</u>
CLAIMS	106401 through 106504 in the Amount of \$1,185,901.05. Commissioner Riveland MOVED to approve the claims 106401 through 106504 in the Amount of \$1,185,901.05. Commissioner Hamilton SECONDED . No discussion. <u>Motion passed unanimously.</u>
ANNOUNCEMENTS	Commissioner Crago announced that the Beartooth Front public hearing that had been postponed, has been rescheduled for Wednesday, February 3, 2021, at 10:00 a.m. at the Columbus Evangelical Church. The church has the room to accommodate the anticipated crowd and also has the ability to provide the necessary internet capability for the zoom meeting. Thank you to the Church for providing the facility for this meeting.
CONSENT AGENDA	<u>Area II Agency</u> A) FY2021 Program Match for Senior Citizen Services in the Amount of \$12,328.00
FILE	<u>Sheriff</u> A) Quarterly Report Ending 31 st of December in the Amount of \$1300.00 B) Monthly Report for the Month of December in the Amount of \$100.00 <u>Commission</u> A) Bridge & Road Safety and Accountability Program Tax Allocation in the Amount of \$108,241.20 Commissioner Hamilton MOVED to consent to the consent agenda and file the file items. Commissioner Riveland SECONDED . Discussion – Commissioner Crago explained that the Area II Agency administrates the funding for the Senior Centers in a ten-county area. The county has given funds toward this program to fund the Senior Centers in the county. <u>Motion passed unanimously.</u>

REGULAR BUSINESS Planning Department

A) Bluebird Minor Subdivision Recommendation for Preliminary Plat Approval as Presented With Conditions. Forrest Mandeville read the attached memo marked Exhibit A. Commissioner Riveland **MOVED** to approve the Bluebird Minor Subdivision recommendation for preliminary plat approval as presented with conditions as listed in the staff report. Commissioner Hamilton **SECONDED**. Discussion – Tom Kelly explained that there were some changes. The shared access was recorded with the Clerk & Recorder on January 4, 2021. The easement of twenty feet for Beartooth Electric was approved. There will be a shared well and that has been approved and a shared well users agreement has been drawn up. Commissioner Crago stated that the motion does not need to be changed by the items Tom discussed. Forrest added that changes cannot be made after the Commission's approval without going back through the process. Once the Commission approves the preliminary plat approval, the conditions are set. Commissioner Crago asked Forrest to reread condition number 7. Forrest read condition number 7 which stated "The use of the property shall be as proposed and reviewed. No unreviewed or unpermitted use is allowed. This includes the use of multiple RVs on the site. Therefore, no more than one RV shall be on site, unless clearly not hooked into water/sewer." Forrest stated that the reason for this is upon the latest review, there were two RVs on site. One is supposedly moving off site. As long as someone puts a home there, it would still have to be in compliance with the DEQ, which is for a one-bedroom home. If a four-bedroom home were to be built, it would not be in compliance with DEQ and there would have to be a DEQ rewrite done to allow that. Commissioner Crago asked Tom if he is comfortable with condition number 7 not being changed. Tom stated that Forrest is correct and that the limiting factor on the lot is the capacity of the sewer system. This lot is like any other, if you exceed the capacity, you have to go to the sanitarian to have the sewer system changed to comply with the new use. If it is approved to make things bigger, then this will have to be improved. Tom stated that as long as the language is clear and understood then he approves of it. Commissioner Crago stated that as long as Tom, as a representative of the developer and the planning department are comfortable with the language in its current state, the motion can stand without amendment. Motion passed unanimously.

B) Letter Recommending A&E Design for On Call Architectural and Engineering Services. Commissioner Hamilton **MOVED** to approve the letter recommending A&E Design for on call architectural and engineering services. Commissioner Riveland **SECONDED**. Discussion – Commissioner Crago explained that once the successful architecture & engineering service has been selected the hourly rate will be negotiated. The fee will be determined when their services are required. Motion passed unanimously.

Commission

A) Stillwater County Public Records Request Form. Commissioner Hamilton **MOVED** to approve the Stillwater County public records request form. Commissioner Riveland **SECONDED**. Discussion – Commissioner Crago explained that this document was developed due to an increase in Freedom of Information act requests. This form formalizes the request process. Motion passed unanimously.

Historic Preservation Committee

A) CLG Grant Application. Commissioner Hamilton **MOVED** to approve the CLG grant application. Commissioner Riveland **SECONDED**. Discussion – Maurie Petterson explained that CLG stands for certified local government. This grant is from the Federal Government and goes through the state to local levels. Columbus and the County match funds from the federal and state level to the Certified Local Government to preserve the partnership between the different levels of government to promote historic preservation at the grass roots level. This ensures that historic preservation is a part of the community. This will match the state and federal funds. Commissioner Crago added that this is a program that the City of Columbus and the county have participated in for a number of years. The city does a \$3750.00 match and the county does a \$3750.00 match. This is for a good cause and the county used the historic officer to do a site evaluation before the demolition of the old hospital to make sure there was nothing of historical relevance being destroyed. Motion passed unanimously.

Road & Bridge

A) Berry Creek Road Abandonment Viewers Report. Commissioner Riveland **MOVED** to accept the Berry Creek Road abandonment viewers report. Commissioner Hamilton **SECONDED**. Discussion – Adam Tuning stated that he is representing Miss Joan Stanley who is an adjacent landowner who objects to the abandonment. Commissioner Crago stated that this can be stated during the public hearing for the abandonment and asked for the findings of the viewers report. Commissioner Riveland read the viewers report for the Berry Creek Road. The report determined the road is not developed or maintained and is used by

landowners to access farmland. It was further determined there is no impact to the road & bridge department. Commissioner Crago reminded everyone that questions or comments at this time are for the viewers report. Questions or comments regarding the abandonment will be addressed during the public hearing. Ron Olson stated that he didn't want a pep talk or speech. Commissioner Crago responded that he would encourage that to happen during the public hearing portion of the abandonment. No one will be prevented from speaking now but it would be better served to speak during the public hearing. Ron Olson stated that when this was proposed there was no intent to limit access to affected landowners. He thought this was unnecessary to have this road as a county road. The southern portion of this abandonment is surrounded by portions of the previously abandoned in 1933. The road dead ends and does not go to publicly accessed property. There was a concern that the unmaintained road would be traveled by the public and there would be safety issues. Ron stated that he did not think this was an outrageous request. Ron does not want anyone to think he was trying to limit access. If this is not abandoned, the landowners are not allowed to have gates to contain their livestock. With the new proposal and not being allowed to restrict the movement of their livestock and this is more concerning than abandoning the road. The county can put in cattle guards but the expense would be on the landowner with the cost being approximately \$10,000.00 per cattle guard. Ron questioned what will happen if the abandonment gets denied. Motion passed unanimously.

PUBLIC COMMENTS ON COUNTY BUSINESS – None heard.

With no further comments hear the meeting was adjourned at 9:44 a.m.

PUBLIC HEARING

January 19, 2021

PRESENT Commissioner Mark Crago, Chair, Commissioners Tyrel Hamilton and Steve Riveland, members, Shannon Fisher, Admin Assistant.

Others Present: Kevin Ray, Road & Bridge; Mark Schreiner, Road & Bridge; Carol Arkell, DES; Bill Pronovost, DES; Chip Kem, SCSO; Emily Schabacher, Stillwater County News; Maurie Petterson, Historic Preservation Committee; Forrest Mandeville, Planning; Citizens: John Sherwood, Ron Olson, Gina Olson, Bob Van Oosten, Charlotte Van Oosten, Devin Olson, Mariah Weiler.

OPEN PUBLIC HEARING Commissioner Crago opened the Public Hearing at 9:45 a.m.

REASON FOR PUBLIC HEARING Commissioner Crago made introductions and announced the Public Hearing is being held for a petition to abandon a portion of Berry Creek Road. Commissioner Crago asked for attendants of the meeting to speak loudly and clearly for recording purposes and to state your name for the record.

BACKGROUND ON SPECIAL DISTRICT Mark Schreiner explained that Ron Olson inquired about a petition to abandon because of the gates across the road. Mark told Ron that one of the options for the gates on the road was to abandon the road. Ron decided to on trying to have the road abandoned. Mark further explained that there are gates across the road and there cannot be gate across county roads.

QUESTIONS AND COMMENTS: Commissioner Crago called for questions and comments. Commissioner Crago stated that one comment was received a new landowner. Commissioner Crago further stated that notifications for the abandonment were sent out on December 29, 2020 to all the landowners.

On December 30, 2020, a deed was recorded from Holmgren to Stanley. Holmgren was mailed the notification because she was the landowner at the time the notifications were sent out. There is a new landowner at this time that objects to the abandonment. The letter from the new landowner will be filed as an opposition letter.

John Sherwood stated that he believes the abandonment will hurt both parties as far as the value of their land. Approximately a month ago, Stanley bought 3800 acres of land with two miles of county frontage road. If this goes through, she will have 3800 acres of land with no frontage and her only access will be just a dead-end road. There is no other access for this land. John feels that this will reduce the value of her property by about one third. This would affect Ron in the same way but he is not planning on selling his land right away. All landowners are in the long-term real estate investment business if you want to be or not. Sooner or later this land will be sold and it will be worth a lot more with two miles of road frontage. A sign could be posted stating that all lands past this point are privately owned and it would turn most people around from continuing up the road. This would solve the problem. If this road is closed the access will never come back and it is not costing the county anything. Mariah Weiler asked John what his interest in the abandonment is? John responded that he has no monetary interest but that he owns a piece of land in the area that doesn't front this road. John further stated that he was speaking with a realtor who was discussing the abandonment and she asked if he would come to the meeting and speak.

Ron Olson asked if his comments made during the agenda meeting would be transferred or considered during the public hearing. Commissioner Crago told Ron that he could summarize his comments. Ron stated that for the record the road does dead end. At this time, there are only two private parties that own the property. Ron said that he would not object to working with the new landowner to make sure they have full access to their property. Ron further stated that his biggest concern to keeping this a county road is the public access and having the public drive through and leaving gates open but now that is the way it is supposed to be, with the gates wide open. Ron asked what the county's responsibility is regarding maintenance from a legal standpoint if someone drives on this road and gets stuck or has an accident. Is the county going to start maintaining a road that goes nowhere? What is the county's responsibility? Commissioner Crago responded that on the legal aspect of the question, the Commission would need to confer with the County Attorney before answering that question. Regarding the road maintenance portion of the question Commissioner Crago stated that the current level of maintenance would be continued which is no maintenance at this time. The county is currently having discussions as to maintenance of all the county roads.

Adam Turning stated he has submitted Ms Stanley's written objection and that Ms. Stanley has only owned the property for less than thirty days. This is a county road that touches a lot of her property. Ms Stanley intends to be a good neighbor to Mr. Olson but at this time opposes the abandonment.

John Sherwood questioned the fact that many of the abandoned county roads have gates on them and they are not locked and if the public wants to go through them, they can close it and keep the cattle in but people can go through if they want to. Commissioner Crago pointed out that John made a statement about abandoned roads and they can have a gate across them. In a recent court decision, it was determined that county roads cannot have a gate across them or any obstruction to free passage of the road. In short, if a road is abandoned it can have a gate across it, if it is an open county road, based on the court decision, a gate across the road is an obstruction and must be removed or the gate could be pinned back permanently. There may be a lot of gates out there that the county is unaware of. Once the gates have been identified, the county has a responsibility to see that those gates are removed and other options are employed to contain livestock. John stated that this could become a problem in the county and the state in places where these old roads are, as long as it is not blocked, it should be okay. Mark Schreiner responded that state law does change the requirement for a county road. State law does not distinguish usage on these roads so there cannot be gates on public access county roads. Commissioner Crago stated that the gate issue is a topic to be discussed another day. Gina Olson stated that they put their heifer calves up there in May and have never worried

about people coming in. Gina further stated that she had found while driving up there where someone had dumped deer carcasses and cow bones. Coyotes can drag them up there but her cows eat them and can choke or they swallow them. Gina said it is not fair that she has to go pick up after someone who had no business on being on their property. People will drive to their section where the gate is padlocked shut and will either turn around and leave ruts, cut their gate or drive through it. The Berry Creek gate has been driven through and turned all the horses in there. The horses were some of the wildest things they have ever had to get out of there. It was dangerous. Some people are lawsuit happy and buy their places from money received from lawsuits. Gina stated that they have worked hard for everything they have and why are they fighting to protect what is already theirs. That is not fair. They are not devaluing their land whatsoever by closing the road. There is a green gate in place for Holmgren's or whoever is the current owner to access their place. They should not have to pay \$10,000.00 to \$12,000.00 for cattle guards to make it easier for someone to come in and dump or do whatever they want. The cows eat that stuff and to watch a cow die of hardware is heartbreaking.

Mariah Weiler is speaking on behalf of Upper Keyser Creek Ranch. Mariah's family ranch borders Berry Creek Road from approximately the first mile to the disputed gate. The Weiler's are in favor of closing the road for many reasons. From an economic standpoint it makes no sense to spend money rebuilding the road and then maintaining a road that leads to nowhere. The proposed section of road for closure already looks abandoned. There is a half mile stretch of road to the east of the proposed road closure that has not been maintained for years. There has also been a gate across the road at the beginning of this stretch that has never been an issue no matter who the landowner was or currently is. The only reason someone should be going through these gates is if they are a property owner or have permission to be there by a landowner. There is no physical destination possible for this stretch of road. Only the landowners on Berry Creek Road should have a say in the road closure. People that are opposing the closure that don't even live on this side of the river should not have a say, even if they hire an attorney, which does not include the new landowner, and it is quite frankly none of their business. If someone is disputing a property issue that does not involve them personally because of lack of land ownership in that area, then they need more to do and should keep themselves focused on their own business. In the current economic climate, everyone's future is unknown. Due to an increase of unemployed people who have too much time on their hands, the Weiler's as well as their neighbors are seeing an increase in road traffic on various county roads in our area. Most of the vehicles are unknown and many have out of state license plates. It is obvious that the local traffic are not landowners either. Once again there is absolutely no reason for these people to be there and our worry is that they are up to no good. This leads to trespassing, illegal hunting, destruction of property, littering and theft, all of which as landowners we are rarely compensated for. We are also seeing an increase of private planes flying over our properties making us wonder if they are connected to the traffic on the road working together to plan illegal activity. Mariah has been told by the Sheriff's department that Yellowstone County has a no limit hire for law enforcement officers and because of this Stillwater County and other outlying counties are seeing an increase in illegal activities. It is not like living in town where your neighbor might observe something happening at your home and call the police. Our 9-1-1 response time is a lot longer. Because we cannot monitor our property constantly, we are always at risk and it is unlikely that the culprit will ever be caught. In Mariah's opinion, just because a road is public does not mean everyone should drive on it continuously for no reason without a destination. There are those of us that have common sense to use the roads sensibly. Unfortunately, there is an increasing amount of disrespect of people who do not act sensibly. Keeping a road open to nowhere would increase the risk of illegal activity in the area. Mariah knows the Holmgren ranch has sold and access to this ranch, whoever the owner is shouldn't be a problem as there is a gate right off Berry Creek Road to the south that provides easy access to the property and is used frequently by the lessee, eliminating the need to keep the road open through the Olson property. In Mariah's opinion this is the obvious solution. Mariah asked the Commission to think logically when making this decision and consider how much keeping this road open is going to cost the county and the landowner. During the current economic environment, money should be spent wisely. In this case, it does not seem to serve the better good to keep this section of the road open, the bad simply outweighs the good. Frankly, the locals all consider

the road to be already closed. It is only because of unnecessary outsider meddling, self-proclaimed entitlement, and perhaps intimidating vendettas against the county that it has become an issue. It is also unfair as neighbors and good citizens to put Olson's livestock and property at risk to keep a road open that literally goes nowhere except to Olson's next gate. Wouldn't it be nice for a change to see neighbors looking out for neighbors instead of allowing outsiders to determine the outcome and costing the county a lot of money? It is senseless to think that just because a person thinks it is their legal right to drive on a county road to nowhere be reason enough to allow this road to stay open. In some instances, change needs to happen. Mariah's family and neighboring families have worked and lived in the area for generations. If anyone should know what is happening in our area and what makes logical sense, it is us. Bottom line, there is no simple logical reason that this road should remain open. Finally, for the record, Mariah would like to know how much this would cost the county and landowner if this road remains open. Commissioner Crago asked if Mariah would like to submit her letter. Mariah submitted her letter to the Commission.

Bob Van Oosten stated that he lives on Springtime Road and his land surrounds part of Ron Olson's land. He is not directly affected by this closure but on their ranch, they have closed many miles of road to stop public access because of agriculture their only security is to not let people into the middle of their land. For Olson's, this is very important. The proposed cost of leaving the road open for Olson's to pay for a cattleguard is an unnecessary burden to Ron Olson. The other mile, the north to south piece, leads to nowhere and has never been developed and is unrecognizable as a road, at the very least, this portion should be abandoned. Bob further stated that he has driven the road and cannot understand why the new owner of Holmgren's would want access to all that land. People in agriculture tend to forget that people buy this ag land not for agriculture purposes but for perhaps future development and in that case, it would be nice to have a county road there and people in agriculture tend to forget that. Bob stated that he is an opponent to closing the road.

Commissioner Crago stated for the record that for clarification purposes if a road like this stays open and a landowner needs or wants a cattleguard installed, the county policy is that the landowner pays for the materials and the county pays for the installation and labor of installing the cattleguard.

Ron Olson asked that in the current state of the county road if he requested to have a cattleguard installed does a survey need to be done to determine where the county road and land ownership lines are to have a cattleguard installed. Mark Schreiner replied that yes it would need to be surveyed if it cannot be determined exactly where the county road is. Ron Olson stated that a survey would add more expense to the landowner. Gina Olson asked if that cost would be split between landowners if the cattleguard has to go in. Mark Schreiner replied that the cost is for whoever requests the cattleguard. Gina Olson then asked what would happen if the landowner did not want cattleguards and would rather have a gate. Mark Schreiner replied that the landowner could install a gate and leave it open. Gina then asked if they put the cattleguard in but will the landowner get the whole bill for it, is it split between landowners? Mark Schreiner replied that it is not split between landowners unless the landowners want to go together on it. Ron Olson then said, if one person wants to contain their cattle and the other doesn't care, what happens.

Commissioner Crago asked if there were any other questions or comments. Mariah Weiler stated that there is also the issue of other property owners in between. There is Mr. Mader who has a gate across the road, this is the gate she was referring to that has been there her entire life, will he be forced to do something? Commissioner Crago asked if Mader had a gate across Berry Creek Road. Mariah replied yes, the gate has been there a hundred years. Commissioner Crago replied that notices went out last week to the landowners that have gates across county roads that need to be removed. If Mader has a gate across a county road then he should have gotten a letter and he would have the same notice received by other landowners to remove the gate. Various people in the hearing responded that they had not received letters. Gina Olson asked if as of today, do the gates need to be left open because it has been two weeks since they received the letter. Commissioner Crago stated that he has not driven on the

Berry Creek Road for quite some time and he cannot tell them where every gate is. Gina Olson welcomed him to come drive it.

Commissioner Crago asked if there were any other questions or comments? Bob Van Oosten asked how you determine the width of the right of ways? Commissioner Crago responded that the right of ways are deeded in the road book from the roads inception, the right of ways vary on the roads. Bob asked if that information is in the Clerk & Records office. Commissioner Crago replied yes. Bob then added that there are a lot of roads on their place that have never been utilized and are prescriptive only so if the road is prescriptive only, is there an assumed right of way. Mark Schreiner replied that the right of way for prescriptive roads is what they use for maintaining. If a road has a sixty foot and they are only using ten-foot right of ways on each side, that is how it is determined. Many people think it is only the road width, so it is whatever the county uses to maintain the road which is the last thing Mark Schreiner had heard. Mariah Weiler stated she does not think the property lines are accurate out there. Mariah thinks her family owns property into the Mader gate, if he decides to put in a cattle guard, will it be put in at the true center of the county road and will other property owners be made aware if it infringes onto their property. Commissioner Crago responded that is an issue that will have to be discussed during the deliberations of the abandonment. Mariah stated that they own a majority of land that the road is on and the 30-foot easement keeps getting closer to her fence line and the right of way is not being followed. Mariah feels the 30-foot right of way is important if a new cattle guard is constructed. Commissioner Crago said that this will be taken under advisement as the Commission works through the abandonment. Commissioner Crago asked for any other questions or comments on the Berry Creek Road abandonment. No further comments heard.

PROPONENTS Commissioner Crago called for proponents by a show of hands. Six proponents were counted.

OPPONENTS Commissioner Crago call for opponents by a show of hands. Two opponents were counted.

CLOSE PUBLIC HEARING Commissioner Riveland **MOVED** to close the public hearing and to allow the Commission time to deliberate before making a decision. Commissioner Hamilton **SECONDED**. No discussion. Commissioner Crago stated that the Commission will try to arrive at a decision for the Tuesday, February 2, 2021, agenda meeting. Commissioner Crago further stated that Commissioner needs to ensure it has done its due diligence regarding the abandonment, with property along abandonment changing hands and other concerns presented. February 2, 2021 is the goal to make a decision on the abandonment. Motion passed unanimously.

Commissioner Crago closed the public hearing at 10:16 a.m.

APPROVED BY: /s/ Mark Crago, Commissioner Chairman
ATTEST: Heidi L. Stadel, Clerk and Recorder